

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LUKE GRMEK and CAROL GRMEK, Civil Action No. 18cv1552

Plaintiffs,

v.

HYUNDAI MOTOR COMPANY, LTD.,
HYUNDAI MOTOR AMERICA
CORPORATION, and HYUNDAI MOTOR
MANUFACTURING ALABAMA, LLC,

Defendants.

NOTICE OF REMOVAL

Defendants Hyundai Motor America (improperly named as “Hyundai Motor America Corporation”; hereinafter, “HMA”) and Hyundai Motor Manufacturing Alabama, LLC (hereinafter, “HMMA”; collectively, with HMA, “Hyundai”)—by and through their counsel, Clem C. Trischler of Pietragallo Gordon Alfano Bosick and Raspanti, LLP—submit this Notice of Removal. Pursuant to 28 U.S.C. §§ 1332 and 1441, Hyundai hereby removes the above-styled action from the Court of Common Pleas of Westmoreland County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania.

I. BACKGROUND

1. On or about August 3, 2018, Luke Grmek and Carol Grmek (hereinafter, collectively, “Plaintiffs”) commenced this action with the filing of a Praecipe for Writ of Summons in the Court of Common Pleas of Westmoreland County, Pennsylvania, docketed at No. 18CI03452 (hereinafter, the “Underlying Action”). A copy of the Praecipe for Writ of Summons and the docket sheet from the Underlying Action are attached hereto as Exhibits A and B, respectively.

2. Thereafter, on October 18, 2018, Plaintiffs filed a Complaint in the Underlying Action, a copy of which is attached hereto as Exhibit C.

3. In the Complaint, Plaintiffs allege that Luke Grmek suffered severe injuries in a motor vehicle accident that reportedly occurred on August 3, 2016. In particular, the Complaint alleges that the restraint system of a 2006 Hyundai Santa Fe failed in some manner that allegedly caused or contributed to the injuries sustained by Mr. Grmek in this accident. Thus, Plaintiffs have asserted crashworthiness claims against the Defendants which are predicated on theories of negligence, strict liability, and breach of warranty.

4. HMA and HMMA received the Complaint when it was served upon counsel on October 18, 2018.

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and, therefore, HMA and HMMA hereby remove this action to the United States District Court for the Western District of Pennsylvania in accordance with 28 U.S.C. § 1441, *et seq.*

II. JURISDICTIONAL BASIS FOR REMOVAL

A. There Exists Complete Diversity of Citizenship

6. Based on the allegations of the Complaint, it appears that Plaintiffs are residents and citizens of the Commonwealth of Pennsylvania. (*See* Compl. ¶¶ 4, 5.)

7. The Complaint asserts negligence, strict liability, and breach-of-warranty claims against three (3) Defendants: (i) Hyundai Motor Company, Ltd. (“HMC”); (ii) HMA; and (iii) HMMA.

8. HMC is a foreign corporation organized and existing under the laws of the Republic of Korea with its principal place of business in Seoul, South Korea.

9. HMA is a corporation organized and existing under the laws of the State of California with its principal place of business in Fountain Valley, California.

10. HMMA is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Montgomery, Alabama. HMA is the sole member of HMMA. As noted, for purposes of diversity jurisdiction, HMA is a citizen of California.

11. Complete diversity of citizenship, therefore, exists between the parties to this action, as Plaintiffs are citizens of Pennsylvania and none of the Defendants is a citizen of Pennsylvania.

B. The Matter in Controversy Exceeds \$75,000

12. Plaintiffs allege that Luke Grmek sustained a myriad of physical injuries and economic damages as a result of the August 3, 2016, motor vehicle accident, including a traumatic brain injury, encephalopathy, vision problems, speech impairment, and post-concussive syndrome. (*See* Compl. ¶ 40(a)–(r).)

13. While HMA and HMMA deny all liability in this action, the allegations set forth in the Complaint and the claimed damages make clear that the matter in controversy exceeds \$75,000, exclusive of interest and costs.

14. This fact is further confirmed by reference to the correspondence and related enclosure attached hereto as Exhibit D. On October 23, 2018, Plaintiffs were asked to stipulate that the amount in controversy in this action does not exceed \$75,000. By virtue of the refusal of Plaintiffs to so stipulate, this Court may take judicial notice of the fact that the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (holding that a notice of removal

“need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

15. Accordingly, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship among the parties and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

III. PROCEDURAL ELEMENTS FOR REMOVAL

16. HMA and HMMA were served with the Complaint on October 18, 2018. This Notice of Removal is filed within thirty (30) days of service upon Hyundai and, therefore, is timely under 28 U.S.C. § 1446(b)(1).

17. This action is properly removed to the United States District Court for the Western District of Pennsylvania, because it was originally filed in the Court of Common Pleas of Westmoreland County, Pennsylvania, which lies geographically within this judicial district. *See* 28 U.S.C. §§ 118(c), 1441(a).

18. Further, it is noted that HMC has yet to be served with original process. This Notice of Removal is being filed on behalf of HMA and HMMA, the only Defendants to have been served with process, and all Defendants who have been timely and properly served hereby consent and join in removal of this action. Nonetheless, and although not required because service has yet to be perfected, counsel for HMA and HMMA has obtained the consent of HMC to removal.

19. In accordance with 28 U.S.C. § 1446(a), copies of all pleadings, process, orders, or other papers filed in the Underlying Action or served on Hyundai are attached hereto. More specifically, the Praecipe for Writ of Summons is attached as Exhibit A, Plaintiffs’ Complaint is attached as Exhibit C, and the remaining materials are attached collectively as Exhibit E.

20. A copy of this Notice will be filed with the Court of Common Pleas of Westmoreland County and served upon Plaintiffs' counsel as required under 28 U.S.C. § 1446(d).

21. Accordingly, HMA and HMMA submit that all procedural requirements for removal have been satisfied.

IV. RESERVATIONS AND REQUEST FOR ORAL ARGUMENT IF REMAND IS SOUGHT

22. If any question arises as to the propriety of the removal of this action, Hyundai respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

23. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Hyundai's right to assert any defense or affirmative matter including, without limitation, the defense of (a) lack of personal jurisdiction; (b) improper or inconvenient venue; (c) insufficiency of process; (d) insufficiency of service of process; (e) improper joinder of claims and/or parties; (f) failure to state a claim; (g) failure to join an indispensable party; or (h) any other procedural or substantive defense available under state or federal law.

V. JURY DEMAND

Hyundai demands a trial by jury on all issues so triable.

VI. CONCLUSION

WHEREFORE, Defendants Hyundai Motor America and Hyundai Motor Manufacturing Alabama, LLC hereby remove this action to the United States District Court for the Western District of Pennsylvania.

Dated: November 16, 2018

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK
& RASPANTI, LLP

By: s/ Clem C. Trischler

Clem C. Trischler (PA52957)

One Oxford Centre, 38th Floor

Pittsburgh, PA 15219

412-263-1816 Telephone

412-263-4246 Facsimile

cct@pietragallos.com

*Counsel for Defendants Hyundai Motor America
and Hyundai Motor Manufacturing Alabama, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically filed the foregoing document with the Clerk of Court for United States District Court for the Western District of Pennsylvania and served the same on the following counsel of record via First Class U.S. Mail, postage prepaid.

Victor H. Pribanic
Matthew Doebler
PRIBANIC & PRIBANIC, LLC
513 Court Place
Pittsburgh, PA 15219
vpribanic@pribanic.com
mdoebler@pribanic.com

Counsel for Plaintiffs Luke Grmek and Carol Grmek

s/ Clem C. Trischler

Clem C. Trischler